closure of all material facts a condition precedent to the existence of a duty in the surety to pay as he has agreed. *North British Ins. Co. v. Lloyd* (1854) 10 Exch. 523; *Atlas Bank v. Brownell* (1869) 9 R. I. 168 (creditor did not disclose that the principal had been gambling); *Magee v. Manhattan Co.* (1875) 92 U. S. 93 (insolvency of principal); *Farmers' Bank v. Braden* (1891) 145 Pa. 473 (insolvency of principal); *Hamilton v. Watson* (1845, H. of L.) 12 Cl. & F. 109 (principal already largely indebted to the creditor); *Bostwick v. VanVoorhis* (1883) 91 N. Y. 353 (principal had been irregular in some way not affecting his moral character or honesty). On the other hand, the surety is not bound in case the creditor fails to disclose the fact that the principal was an embezzler or had been otherwise dishonest in his relations with the creditor. *Sooy ads. State of New Jersey* (1877, Sup. Ct.) 39 N. J. L. 135; *Railton v. Mathews* (1844, H. of L.) 10 Cl. & F. 934. Had the bond in the present case been so worded as to bind the surety to answer for past defaults as well as future ones, the disclosure of the existence of the past default would be a condition precedent. *Pidcock v. Bishop* (1825) 3 L. J. K. B. 109, 3 B. & C. 605. At least, such non-disclosure would be evidence of fraud. *Lee v. Jones* (1864) 17 C. B. N. S. 482. In view of the authorities the present decision seems to be too favorable to the surety.

TRUSTS—RESULTING TRUSTS—DEVISE ON TRUST NOT PROPERLY DECLARED.—A testator bequeathed all his personal property to his executor "in trust for the purposes of paying out and disposing of the same as I have advised and directed him to do." Prior to the execution of the will the legatee promised the testator to carry out the directions, which were communicated to him at that time. *Held,* that beneficiaries orally named by the testator to the legatee were not entitled to have the directions carried out, but that there was a resulting trust for the next of kin. *Reynolds v. Reynolds* (1918, N. Y.) 121 N. E. 61.

It has long been held in New York, in accordance with the great weight of authority in other jurisdictions, that if a gift in a will is in form absolute but in fact upon an oral "secret" trust communicated to the devisee or legatee, who has agreed to carry it out, there is a so-called "constructive trust" for the intended beneficiaries. *Matter of O'Hara* (1884) 95 N. Y. 403. This is also the English law. *Boyes v. Carritt* (1884) 26 Ch. D. 531. A recent Washington case is *contra*. *Brown v. Kausche* (1917, Wash.) 167 Pac. 1075, commented upon in (1918) 27 YALE LAW JOURNAL, 389. Where, as in the principal case, the will indicates that the property is to be held in trust, but fails to reveal the terms of the same, there is greater conflict of authority. The English authorities do not distinguish such a case from that in which the gift on the face of the will is absolute. *In re Fleetwood* (1880) 15 Ch. D. 594. Some American cases take the same view. *Curdy v. Berton* (1889) 79 Cal. 420, 21 Pac. 858; *Cagney v. O'Brien* (1876) 83 Ill. 72. There are, however, authorities to the contrary. *Olliffe v. Wells* (1881) 130 Mass. 90; *Sims v. Sims* (1897) 94 Va. 580, 27 S. E. 436. In the principal case the court attempts to distinguish the absolute devise from that before the court on the ground that in the former there is nothing in the will to show that the devisee or legatee is not to have the property, whereas in the latter the words "in trust" reveal a contrary intention. On the basis of this difference it is argued that in the latter case, the words of the will reveal a resulting trust for the next of kin; that it would therefore be a "fraud" upon them to allow the beneficiaries named in the oral communications to take, and would result in a clear violation of the statute of wills. With the latter contention we may agree; but for the reasons given in the comment in (1918) 27 YALE LAW JOURNAL, 389, it is believed that the same

is true in the case of gifts which on the face of the will are absolute. To permit the intended beneficiaries to take in either case seems to open the door to all the evils which the statutes requiring testamentary dispositions to be in a certain form are intended to prevent. For an argument to the contrary, see the discussion by Professor Costigan (1915) 28 HARV. L. REV. 266.

UNFAIR COMPETITION — PIRATING NEWS MATTER — THE ASSOCIATED PRESS CASE.—The defendant, a corporation engaged in selling news to papers not members of The Associated Press, had from its organization obtained and furnished to its subscribers items of news from early editions of papers published by members of The Associated Press and from bulletins posted by them. Sometimes these news items were verified, at other times not; sometimes they were re-written and again they were not. The Associated Press asked for an injunction to restrain this method of "pirating" its news "until its commercial value as news to the complainant and all its members had passed away." *Held,* that the complainant was entitled to an injunction. *The International News Service v. The Associated Press* (1918) 39 Sup. Ct. 68.

See COMMENTS, p. 387.

WORKMEN'S COMPENSATION—EVIDENCE—AWARD BASED UPON HEARSAY.—In a proceeding before the State Industrial Commission under the Workmen's Compensation Law an award was based solely upon hearsay evidence—statements of the deceased workman to his wife and others. These statements conflicted with other hearsay statements of the workman made to other persons. There was evidence that the deceased had been in two automobile accidents after the date of the alleged injury and before the physical injury which caused death was observed by his physician. There was also the direct testimony of other employees tending to controvert the deceased's statements upon which the award was based. *Held,* that the award was erroneous, as it was based solely upon "uncorroborated hearsay evidence." Chase, Cuddeback and Hogan, JJ., *dissenting. Belcher v. Carthage Machine Co.* (1918, N. Y.) 120 N. E. 735.

The New York Workmen's Compensation Law provides that the Industrial Commission "shall not be bound by common law or statutory rules of evidence . . . but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties." N. Y. Laws, 1914, ch. 41, sec. 68. In spite of this the New York Court of Appeals held in an earlier case that although hearsay evidence might be made the basis of an award it was not sufficient when in conflict with the direct testimony of eye-witnesses. Seabury and Pound, JJ., *dissenting. Carroll v. Knickerbocker Ice Co.* (1916) 218 N. Y. 435, 113 N. E. 507. In the principal case, which probably on its facts did not require the court to go farther than it already had in limiting the powers of the Industrial Commission, the majority placed their decision squarely on the proposition that the Commission may not base an award solely upon "hearsay evidence, uncorroborated by facts, circumstances or other evidence." Of the three dissenting justices it is worthy of note that Cuddeback, J., wrote the prevailing opinion in the earlier case. It is submitted that both cases show an unfortunate tendency upon the part of the court to introduce, to some extent at least, into hearings before the Industrial Commission common law rules of evidence—a thing the statute expressly says shall not be done. Cases in another jurisdiction with a similar statutory provision exhibit the same tendency. *Englebetson v. Industrial Accident Commission* (1915) 170 Cal. 793, 151 Pac. 421; *Employers' Assurance Corporation v. Industrial Accident Commission* (1915) 170 Cal. 800, 151 Pac.